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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

JOANIE SHEPPARD and SCOTT )  
KOELZER )  
Plaintiffs, )  
v. )  
WELLS FARGO FINANCIAL, INC., and )  
ICON EQUITIES, LLC, )  
Defendants. )  
\_\_\_\_\_ )

Cause No.

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

Plaintiffs allege as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, Joanie Sheppard, a/k/a Joanie Cok, was at all relevant times a resident of Gallatin County, Montana.

2. Plaintiff, Scott Koelzer, was at all relevant times a resident of Gallatin County, Montana.

3. Decedent, Wells Fargo Financial, Inc. (Wells Fargo) Is an Iowa Corporation, with its principle place of business in Des Moines, Iowa.

4. Defendant, Icon Equities LLC, is a limited liability company with its principle place of business in Otsego, MN.

5. Defendants are engaged in the business of debt collection as defined in the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

6. Jurisdiction over Plaintiffs' FDCPA claim is proper in this Court pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. This Court has supplemental jurisdiction to hear and adjudicate Plaintiffs' state law causes of action pursuant to 28 U.S.C. § 1367.

7. Personal jurisdiction is proper as Defendants have conducted debt collection activities in the State of Montana, availed themselves of the Montana court system in their capacity as debt collectors, and committed unlawful conduct towards Plaintiffs, Montana residents and citizens.

8. Venue is proper in the Helena Division because Defendant Wells Fargo's registered agent is located there.

**FACTS COMMON TO ALL CLAIMS**

9. On January 15, 2008, Ms. Sheppard, paid the balance due on her Wells Fargo Account # 9141 0000 0032 2371, in the amount of \$4,946.00 and directed that the account be closed.

10. At some time after her instructions to close the account, new accounts were opened in her and Plaintiff Scott Koelzer's names without their authorization or knowledge.

11. In September 2008 Ms. Shepard initiated a fraud claim with Wells Fargo. Since that time Plaintiffs have demand Wells Fargo remove the these fraudulent charges.

12. Wells Fargo's investigation found that the accounts were activated by a phone belonging to Ms. Sheppard's daughter, Melanie, Ilott.

13. Ms. Sheppard told Wells Fargo to collect the debt from Ms. Ilott.

14. Wells Fargo continued to claim the Plaintiffs were responsible for the debt.

15. Ms. Sheppard reported the theft to the Gallatin County Sheriff's Office. The Gallatin County Attorney investigated Ms. Ilott and charged her with felony theft. Ms. Ilott pleaded guilty and was sentenced on June 20, 2011.

16. On September 15 and 20, 2011, Ms. Sheppard informed Wells Fargo that Ms. Ilott had plead guilty to theft and had been sentenced for fraudulently opening accounts in Plaintiffs' names.

17. Plaintiffs once again requested Wells Fargo forgo any further attempts to collect the outstanding balances from Plaintiffs and to take all necessary actions to remove any negative credit action taken against Plaintiffs.

18. On September 26, 2011, Wells Fargo denied Plaintiffs' requests and informed them that the account had been sold to Defendant Icon Equities, LLC.

19. On July 11, 2012 Plaintiffs made a final request to ask Wells Fargo to remove the charges and negative credit reporting related to the stolen account. Defendants have failed to respond.

**COUNT I**  
**VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

20. Plaintiffs repeat and re-allege Paragraphs 1 through 19.

21. Defendants are "debt collectors" as defined by the Fair Debt Collection Practices Act ("FDCPA.") 15 U.S.C. § 1692 et seq.

22. Defendants violated the Fair Debt Collection Practices Act by refusing to cease collection activity and amend their reporting to the credit

reporting agencies after Defendants knew that the charges were not made by Plaintiffs and Ms. Ilott was convicted of theft with regard to the accounts.

23. Plaintiffs have suffered and continue to suffer damages as a result of Defendants' violations of the Fair Debt Collection Practices Act.

24. Plaintiffs are entitled to recover all compensatory and actual damages (including punitive damages), as well as statutory damages of \$1,000 for each violation, costs and attorney's fees as provided by the Fair Debt Collection Practices Act.

**COUNT II – VIOLATION OF MONTANA UNFAIR TRADE  
PRACTICES AND CONSUMER PROTECTION ACT**

25. Plaintiffs repeat and re-allege Paragraphs 1 through 24.

26. Plaintiffs are "consumers" pursuant to the Montana Consumer Protection Act. Mont. Code Ann. § 30-14-101 et. seq.

27. Defendants engaged in unfair or deceptive acts or practices in the conduct of its commerce or trade through its unfair and deceptive debt collection activities.

28. Plaintiffs have suffered and continue to suffer damages as a result of Defendants' unfair and deceptive acts and conduct.

29. Plaintiffs are entitled to recover all compensatory and actual damages (including, but not limited to emotional distress and punitive damages), as well as treble damages, costs and attorney's fees as provided by the Montana Consumer Protection Act.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages from Defendants in an amount to be proven at trial;
2. For punitive damages from Defendants;
3. For attorney fees and cost pursuant to § ; and
4. For such other and further relief as the Court may deem just and proper.

Dated this 24<sup>th</sup> day of September, 2012.

/s/ Jonathan M. Cok  
Jonathan M. Cok  
COK KINZLER PLLP

Attorney for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all issues of fact.

Dated this 24<sup>th</sup> day of September, 2012.

/s/ Jonathan M. Cok

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COK KINZLER PLLP

Attorney for Plaintiffs